

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**RAY BROWN AND ASSOCIATES, INC.,
a Nebraska Corporation,**

Plaintiff,

v.

**HOT SPRINGS SENIOR PROPERTIES,
LLC, a South Dakota Limited Liability
Company; PINE HILLS, INC., a South
Dakota Corporation; STEVEN H. WYATT,
an individual; KELVIN LORENZ, an
individual; and DALE BOEHNER, an
individual,**

**Defendants,
Counterclaimants
and Third-Party Plaintiffs,**

v.

**RAY BROWN, RICHARD J. STACY,
MILLER & ASSOCIATES CONSULTING
ENGINEERS, P.C., a Nebraska
Professional Corporation,**

Third-Party Defendants.

CASE NO. 8:07CV159

**ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE
REMANDED FOR LACK OF
DIVERSITY JURISDICTION**

This matter is before the Court on its own motion. On March 27, 2007, Plaintiff Ray Brown and Associates, Inc. ("RBA"), brought this action in the District Court of Custer County, Nebraska, against Hot Springs Senior Properties, L.L.C. ("Hot Springs"), alleging, *inter alia*, that Hot Springs failed to pay RBA for consulting and development services related to the construction of an assisted-living and long-term-care facility in South Dakota. (Complaint, Filing No. 6-2; and Amended Complaint, Filing No. 97, adding parties and claims). On April 27, 2007, Hot Springs removed the action to this Court, and, on June 1,

2007, filed its Answer as well as numerous counter-claims against RBA, and numerous third-party complaints. (Answer, Counterclaim and Third-Party Complaint, Filing No. 9).

The Notice of Removal (Filing No. 1) asserted that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) “in that there is a complete diversity of citizenship between the parties of this action and the amount in controversy exceeds \$75,000 exclusive of attorneys’ fees and costs.” (*Id.* ¶ 5). Although no party has challenged this Court’s jurisdiction based on diversity of citizenship, the First Amended Complaint does not contain any statement of jurisdiction and no party has provided to the Court any disclosure of the citizenship of each member of Hot Springs.

In the First Amended Complaint (Filing No. 97), Plaintiff RBA, a Nebraska corporation with its principal place of business in Nebraska, notes that it is a “member and owner/investor” of Defendant Hot Springs, a South Dakota limited liability company with its registered office in South Dakota. (*Id.* ¶¶1, 2, 25, 51).

The citizenship of an L.L.C. is defined by the citizenship of its members. *GMAC Commercial Credit LLC v. Dillard Dept. Stores, Inc.*, 357 F.3d 827, 828 (8th Cir. 2004). Because the citizenship of an L.L.C. is that of its members for diversity jurisdiction purposes, it is incumbent on a district court to ascertain the citizenship of each member of an L.L.C. party in any case in which diversity jurisdiction is asserted, in order to determine whether there is complete diversity of citizenship of the parties. *Id.* at 829. See also *Johnson v. Columbia Properties*, 437 F.3d 897, 899 (9th Cir. 2006) (“Notwithstanding LLCs’ corporate traits . . . every circuit that has addressed the question treats them like

partnerships for the purposes of diversity jurisdiction.”); *Carden v. Arkoma Assocs.*, 494 U.S. 185, 189 (1990)(treating limited partnerships as having citizenship of all members).

On or before April 16, 2008, Defendant Hot Springs shall show cause why this case should not be remanded to the Nebraska District Court for Custer County, Nebraska, due to a lack of diversity jurisdiction. Hot Springs shall file with this Court a disclosure of its members and their citizenship as of March 27, 2007, April 27, 2007, and the date of the disclosure’s filing, as well as any brief and any further index of evidence demonstrating complete diversity of citizenship of the parties. Any other party to this action may, but is not required to, submit a brief and index of evidence addressing the matter of the Court’s diversity jurisdiction on or before April 16, 2008.

IT IS ORDERED:

1. On or before April 16, 2008, Defendant Hot Springs Senior Properties, L.L.C., shall file a disclosure of its members and their citizenship as of March 27, 2007, April 27, 2007, and the date of the disclosure’s filing, along with any brief and further evidence showing cause why this case should not be remanded to the Nebraska District Court for Custer County, Nebraska, due to a lack of diversity jurisdiction; and
2. All parties other than Defendant Hot Springs Senior Properties, L.L.C., may, but are not required, to submit any brief or evidence addressing the matter of the Court’s diversity jurisdiction on or before April 16, 2008.

DATED this 2nd day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge